IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No.* 664 *of 2000

Date of Decision : 24.10.2007

State of H. P. …Appellant.

Versus:

Roshan Lal …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. V. K. Verma, Addl. A. G.

For the respondent : Mr. A. K. Bansal, Advocate

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 30.11.1999 passed by the Judicial Magistrate Ist Class, Bilaspur, H. P., in Criminal Case No.153/2 of 1997, titled as State v. Roshan Lal, acquitting the accused of the charged offence under sections 324, 451, 504 & 506 of the Indian Penal Code.

The complainant and the accused persons are real brothers and are immediate neighbours. As per the case of the prosecution on 17.10.1997, when the accused collected the cow dung belonging to the complainant, his wife Smt. Nirmla Devi objected to which the accused started abusing the complainant.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

She informed the complainant, who came out of his house and inquired from the accused as to why he had collected the cow dung and abused him. The accused was carrying an axe and his sister Leela Devi who was also present in the compound was having a gandasa and danda and both of them again started abusing the complainant. The accused also gave a blow with the axe on the complainant's arm with which he was injured. The complainant raised hue and cry when his wife Nirmla Devi and one Smt. Banti rescued the complainant from the clutches of the accused but the accused also locked the complainant and his wife in his house for sometime. Accused threatened the complainant that he would kill him on some other occasion. The matter was reported to the police vide report Ext.PW-4/A. On the basis of which, FIR dated 17.10.1997 was registered with Police Station, Barmana under Sections 324, 451, 504 & 506 of the IPC. Injured was got medically examined by the police through Dr. Vinod Kumar (PW-3) who issued MLC Ext.PW-3/A. Site plan Ext.PW-8/A was prepared and the blood stained clothes (vest) Ext.P-2 belonging to the complainant was also taken into possession by the police vide recovery memo Ext.PW-5/A and danda was taken into possession vide recovery memo Ext.PW-5/B. The matter was investigated and the challan was filed for trial against accused Roshan Lal only. Smt. Leela Devi who was originally named in the daily diary report Ext.PW-4/A as also in FIR Ext.PW-4/B was not associated as accused.

The accused was charged for the offences under sections 324, 451, 504 & 506 of the Indian Penal Code. The accused did not plead guilty and the matter was put to trial accordingly.

In order to prove its case, the prosecution examined 8 witnesses and the statement of the accused u/s 313 Cr.PC was also recorded.

The Court below, considering the material on record concluded that the prosecution had not been able to prove its case beyond reasonable doubt and the accused was not guilty of the charged offences. The acquittal is primarily on the ground that out of the spot witnesses, 2 witnesses i.e. PW-1 & PW-6 did not witness the occurrence of the incident and the statements of the witnesses i.e. complainant (PW-5) and his wife (PW-2) did not inspire confidence.

I have perused the record and in my view, the Court below has correctly appreciated the material on record. In all the prosecution examined 8 witnesses. Shri Chandu Ram (PW-1) and Shri Kanshi Ram (PW-6) are the independent witnesses who have been examined to prove the case of the prosecution. In my view, testimony of both these witnesses is not of much significance as both of them have stated that they had not witnessed the occurrence of the incident and had arrived only after the incident was over. As per the version of PW-1, Shri Manohar Lal (PW-5) had shown him his blood stained arm and told him that the accused Roshan Lal had given a blow with an

axe. He has further stated that when he reached the spot, Kanshi Ram, Lekh Ram and Banti Devi were also present. In cross-examination, he has specifically stated that no incident took place in his presence. Version of Shri Kanshi Ram (PW-6) is to the same effect. He was informed by Shri Manohar Lal (PW-5) that the accused had given a blow with an axe on his arm. In cross-examination, he has specifically admitted that he did not see accused Roshan Lal hit anyone and the incident did not take place in his presence. As per him, there is animosity since long and the relation between the two brothers is strained. He has witnessed the recovery of the axe, taken into possession vide seizure memo Ext.PW-5/A. In his cross-examination, however, he has stated that he did not know as to from where the axe was found and that the police had forcibly made him a witness. Thus, from the statement of the witness what emerges is that there is animosity between the real brothers i.e. accused and the complainant and the recovery of the weapon of offence Ext.P-2 vide seizure memo Ext.PW-5/A is itself doubtful and these witnesses did not see the actual incident.

Dr. Vinod Kumar (PW-3) has testified the injury on the body of the complainant and issued MLC Ext.PW-3/A. PW-4 & PW-7 are the police officials who have recorded the daily diary report Ext.PW-4/A and FIR Ext.PW-4/B. PW-8 is also the police official who has carried out the investigation. Shri Manohar Lal

(PW-5) and his wife Smt. Nirmla Devi (PW-2) are the eye witnesses.

As per the version of PW-2, the dispute pertained to the cow dung wrongly lifted by the accused. On being questioned, the accused abused her husband (PW-5) and also gave a blow of axe on his arm. She has stated that the accused locked up both PW-2 & PW-5 in a room. She shouted when Lekh Ram and Kanshi Ram came at the spot. She has further stated that her daughter Lata Rani was also present. In her cross-examination, she has admitted that the aforesaid two persons came at the spot after her husband had called for them. She has further admitted that she had initiated a litigation against her elder brother-in-law and that she had tied her cattle in front of the house of the accused.

As per the version of PW-5, the incident took place on 15.10.1997 at about 8 to 9 in the morning. He has admitted that he does not have cordial relations with the accused. He has admitted the presence of Kanshi Ram, Lekh Ram and Banti Devi at the spot.

Statements of PW-2 & PW-5, in my view, are contradictory and do not inspire any confidence. Further, the case of the prosecution stands falsified by the depositions of these witnesses itself. As per the prosecution, the incident took place on 17.10.1997 which is evident from Ext.PW-4/A and Ext.PW-4/B. However, PW-5 in the opening statement has

deposed that the incident took place on 15.10.1997. As per PW-5, the incident took place at about 8 to 9 A.M. whereas as per PW-2 the incident took place at about 7 or 8 in the morning. The version of PW-2 that on hearing her noise, Shri Lekh Ram and Shri Kanshi Ram came at the spot is not corroborated by PW-5. Further the presence of Smt. Lata Rani as stated by PW-2 is also not corroborated by PW-5. Importantly, out of the aforesaid persons, only Shri Kanshi Ram was associated in the investigation and also examined in the Court as PW-6. From his statement, it is clear that he has not seen the quarrel and in fact he has not supported the prosecution with regard to the recovery of the weapon of offence. He has even gone to the extent of saying that he was forced by the police to be a witness. Why the other witnesses i.e. Lekh Ram, Lata Rani and Banti Devi not associated or examined in the Court has not been explained by the prosecution.

The case of the prosecution, in my view, does not appear to be true for the reason that Smt. Leela Devi who was mentioned in the daily diary report as well as in the FIR has been let out by the Investigating Agency. This itself creates a doubt with regard to the prosecution story. The version of PW-2 that the accused Roshan Lal entered into the house of the complainant and gave a blow of axe in the arm stands falsified by the spot map Ext.PW-8/A, which shows the incident to have taken place in the open Court yard. The version of the aforesaid

two witnesses, therefore, does not inspire confidence. The prosecution has not been able to prove its case beyond reasonable doubt and it would not be safe to convict the accused on the basis of presumption particularly when it has come on record through the depositions of the witnesses that there is animosity between the two real brothers who have been litigating prior to the date of alleged incident. Site map discloses that there are houses belonging to other persons who have not been associated by the Investigating Agency except Shri Kanshi Ram who has also not supported the case of the prosecution.

For all the aforesaid reasons, I see no reason to interfere with the findings and conclusions of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

(Sanjay Karol),
Judge.

October 24, 2007.
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